

01 June 2000

Subject: Billable Time for Support Contractor Invoicing Under ESC Support Services Contracts and/or Task Orders

To: All ESC 2/3-Ltr Program Office Users of Contracted Support Services (whether ITSP; SETA; FFRDC; et al)

From: ESC/XPK (Steve Linchey, Contracting Officer)

Premise: Government Officials are not authorized to grant "administrative leave" to support contractor personnel for purposes of "documentation" to "validate" incurred manhours as allowable/allocable invoiced billing charges

Occasionally I receive requests/hear about situations where Government Civilian or Military supervisors would like to extend "administrative leave" or "free time" to Contractor employees to attend Government-sanctioned activities such as golf tournaments, sports days, office picnics or similar opportunities. As we move into the summer months, it seems like these situations occur more frequently. I would like to take this time to remind all who are involved in the administration and performance of our support services contracts/orders that regulatory requirements stipulate strict guidelines regarding such contracts. In order for man-hours to be considered "expended" for billing/invoicing purposes, actual advisory & assistance services (A&AS) or other classifications of "SETA"/"FFRDC" support services have to be performed against the contract/task order's Statement of Work (SOW) or Performance Work Statement (PWS). Government personnel who are providing administration and surveillance over these contracts/orders need to continue to recognize that contractor employees are not "your/the Government's employees"; they are the Contractor's employees. As such, you have little ability to regulate their conduct as it relates to work or duties that are not associated directly with the contract itself. For instance, neither statutory nor fiscal law allows Government personnel the authority to grant "paid administrative leave" (billable time) to our Contracted Support workforce.

As I've discussed before, the implementation of such requirements/restrictions does not mean that support contractor personnel cannot participate in ESC & SPO/PAD sponsored events along with their Govt. (organic) employee counterparts; it simply means that any such time spent in any "non contracted-support tasking" endeavors must be done "on employee personal time", rather than considered as "billable time" under the Defense Contract Audit Agency rules for allowable/allocable costs. Acceptance of non-work related time as billable under the submission of a public voucher (invoice) for payment, could constitute a false claim, which might further lead to criminal sanctions, fines, suspension, and/or debarment. For instance, under the provisions of the False Claims Act, 37 U.S.C. 3729, individuals and corporations can be fined from \$5,000 to \$10,000 for **each** false claim submitted, and be liable for **treble** the amount of any actual damages suffered by the Government. Such penalties can apply to **both** Government and Contractor employees.

We hope that this reminder may well help someone, or some organization/company, to avoid getting into an unintended violation of statutes or regulations. The above guidance related to this subject matter has been coordinated with the ESC Office of the Staff Judge Advocate. I would encourage that any questions regarding these rules be directed to me at (781) 377-8859, or Capt Wayne Gordon at ESC/JA, (781) 377-7128. Thank You all for your time and attention to this topic!

//signed//

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